

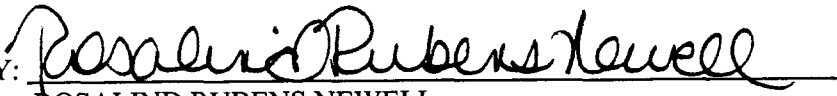
00- *R* -1827

Entered - 07/14/00 - sb
CL00L0424 - DIANNE C. MITCHELL

CLAIM OF: **DONALD M. BROWN,**
through his attorney,
Curt Blackburn Thompson, II
581 Simpson Street, NW
Atlanta, Georgia 30314-3839

For damages alleged to have been sustained as a result of pension payroll
deductions between 1985 and 1999.

THIS ADVERSED REPORT IS APPROVED

BY: 
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L024

Date November 1, 2000

Claimant /Victim DONALD M. BROWN
BY: (Atty) Curt Blackburn Thompson, II
Address: 581 Simpson Street, NW, Atlanta, Georgia 30314-3839
Subrogation: Claim for Property damage \$ not stated Bodily Injury \$
Date of Notice: 06/28/00 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 1985 - 1999 Place: 55 Trinity Avenue, SW
Department Police Division:
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges that he has been damaged due to the City's failure to include overtime in the calculation of pension benefits. The claimant has filed a lawsuit to resolve the issues raised in his claim.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

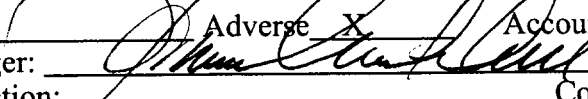
BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager:  Concur/date 11-01-00
Committee Action: Council Action



INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS

A DIVISION OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, AFL/CIO

581 SIMPSON ST. NW, ATLANTA, GA 30314-3839
(404) 521-9043 OR 1-800-487-3658 FAX (404) 688-8206



June 27, 2000

VIA CERTIFIED MAIL

ENTERED - 7-14-00 - SB
00L0424 - DIANNE MITCHELL

The Honorable Bill Campbell, Mayor
City of Atlanta
55 Trinity Avenue, S.W., Suite 2400
Atlanta, Georgia 30335

JUN 28 2000

Mitchell
07/06/00
[Signature]

Ref: Donald M. Brown v. City of Atlanta, et.al.
Constitutional Challenge to City Ordinance RL6:65 (Pensions) ss. 6-248

Dear Mr. Campbell:

Please be advised that I represent Donald M. Brown in the above referenced matter. Please direct all correspondence in this matter to my attention. This letter is to give your office and the City of Atlanta 30 days notice of our intention to file suit in the Superior Court of Fulton County to challenge the validity of the above referenced ordinance under the Georgia Constitution.

The ordinance, passed in 1985, reads that in calculating a pensioners benefits that overtime pay would be excluded from calculating benefits. This was done without the consent of employees at the time and no employee was asked at the time or afterwards if they would elect to be governed under this ordinance. Prior to that time overtime was used in calculating benefits. Additionally, pension contributions prior to this ordinance going into effect were taken out based on using overtime pay. No refund was ever made to employees for moneys taken out of overtime pay when this change was enacted and none has been made to date.

Mr. Brown is a City of Atlanta Police officer employed since 1980 under the 1978 pension plan. He did not elect to come under the 1986 amendments. He had pension deductions taken out of his paycheck from 1980 that included overtime wages and only learned that this was discontinued in 1985 when he went to apply for his pension benefits in 1999. He in no way consented to nor agreed to this change in his pension contract. Additionally he never received or accepted any refund for the pension contributions taken from his overtime pay from 1980-1985.

Mr. Brown has worked significant overtime over the years including the last three years as is relevant to calculating pension benefits. His expectation was that his pension benefit would be calculated considering the overtime pay per the terms of the pension plan when he was hired. He has since been told by Alexander Farrington with the Pension

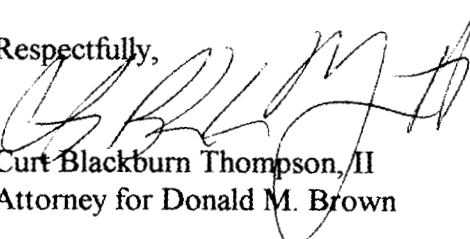
Board that he will not receive his pension benefits calculation based on his overtime pay. This results in a substantial reduction in the benefits otherwise owed to Mr. Brown.

While this may have been an unclear area of law in 1985 it is very clear now that such a reduction in pension benefits without the consent of the pensioner violates the Georgia Constitution. In Horton v. State Employees Retirement System, 421 S.E.2d 703(1992), the Georgia Supreme Court clearly stated that changes to a pension plan benefit which REDUCE an employees benefits are a violation of the Georgia Constitution Article 1, ss 1, paragraph X. As such the ordinance as it is being applied to Mr. Brown specifically is unconstitutional. While it may be possible to apply this ordinance to employees hired after the ordinance went into effect the ordinance as it makes no distinction between when an employee is hired is on its face a violation of the same provision of the Georgia Constitution.

You hereby are on notice that the City of Atlanta and the Police Officers Pension Fund has 30 days to: cease applying this ordinance to Mr. Brown; allow him to pay into the pension fund any moneys for overtime pay that the City unconstitutionally refused to deduct from his pay; and to allow Mr. Brown to retire with the pension benefit he is due including calculating that benefit based on his regular salary with overtime pay. Your refusal to do so will result in immediate litigation in the Superior Court of Fulton to seek an injunction, to have the ordinance declared unconstitutional, and for costs and attorneys fees as the Court deems just and proper.

If you have any questions or concerns please contact me at your convenience.
Thank you for your prompt attention to this matter.

Respectfully,



Curt Blackburn Thompson, II
Attorney for Donald M. Brown

cc: Robb Pitts, City Council President
Susan Pease Langford, City Attorney
Don V. Lee, Chair, Police Officers Pension Board
Donald M. Brown

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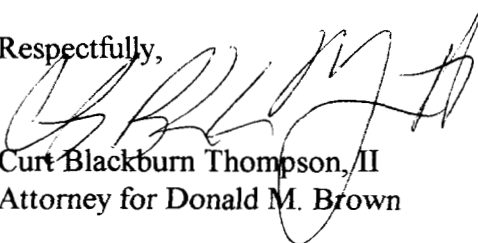
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